the evidence of the appellant that the cheque was given to the respondent to enable him to show it to the auditor of CPA should he, the respondent, be queried, which evidence was rejected by the learned Judge) and it follows, in our opinion, that in law the cheque had been accepted as a conditional payment of the debt, conditional on it not being dishonoured when presented for payment in the ordinary way. In our judgment until the cheque had been presented for payment and dishonoured the respondent could not sue on the debt, and this action ought to have been dismissed on this ground.

It is true that the cheque was undated at the time it was given to the respondent. But an undated cheque is nevertheless valid: see section 3(4) of the Bills of Exchange Act (Cap. 28). Under section 20(1) of the Act, when a bill of exchange is wanting in any material particular, such as the date of the bill, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. The respondent in this case could have filled in the date on the cheque and presented it for payment long before he commenced the action, which indeed he should have done but did not do.

We therefore allow the appeal, set aside the judgment of the High Court and dismiss the claim of the respondent. The respondent will have to pay the costs of the appeal and costs of the action in the High Court. There will be the usual consequential order for repayment to the appellant or his solicitors of the deposit paid into Court by the appellant as security for the costs of the respondent.

Appeal allowed.

Solicitors: *Low & Partners; Wee Swee Teow & Co.*

TEO AI CHOO v. LEONG SZE HIAN

[C.A. (Wee Chong Jin C.J., Sinnathuray & Lai Kew Chai JJ.) March 26, 1986]

[Singapore – Civil Appeal No. 14 of 1984]

Contract – Oral agreement – Assignment of mortgaged house – Whether on trust or outright purchase – Findings of fact by learned trial Judge – Whether contrary to evidence.

Evidence – Two directly contradictory versions – Findings of the trial judge – When findings should not be disturbed by appellate court.

This appeal concerned the beneficial ownership of a single storey semi-detached house known as No. 59 Walmer Drive Singapore ("the property") held under a 999 year leasehold commencing from January 1, 1953. The property originally belonged to the respondent's father who assigned it to the respondent in January 1977. The respondent mortgaged it to a finance company, Overseas Union Trust Limited ("OUT") for $80,000. He fell into arrears in his mortgaged repayments and OUT finally decided to exercise their mortgagee right of sale. The appellant, who had known the respondent for eight years, offered to help by obtaining a loan from her employers, the Urban Renewal Authority, to pay the purchase price. However, the respondent paid all the legal fees and the stamp and registration fees relating to both the assignment and the new mortgage. He also paid $500 into the appellant's account with her bank every month. The leasehold was thus transferred under the Land Titles Act (Cap. 276) by the respondent to the appellant on November 5, 1979.

Within two months of the transfer and after the appellant had left for Hawaii on a two-year scholarship course, the respondent broke off relations with the appellant and married a third party one year later. The appellant then took steps to sell the property whereupon the respondent filed a caveat under the Torrens System to protect his interest and possession of the property. On October 13, 1981, the appellant served on the respondent a notice to quit the property.

Both parties then commenced proceedings in the High Court, the respondent seeking a declaration that the appellant was the trustee of the property for his benefit and for an order that she transfer the property to him upon his payment of all monies necessary to discharge the new mortgage. The appellant, on the other hand, asserted that it was an outright sale. The learned trial judge found for the respondent (see [1984] 2 M.L.J. 192). The appellant appealed.

Held, dismissing the appeal: (1) in a case such as the instant case, where there were two directly contradictory versions the acceptance or rejection of which significantly depended on the oral testimony of the protagonists, the role of an appellate court is clear. The court has to accord to the findings of facts of the learned trial judge the greatest respect and ought not disturb them unless it is satisfied that the learned trial judge had reached a wrong decision and that in the context of this case "any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion";

(2) the findings of fact of the learned trial judge were based on a sufficient substratum of evidence such that the appellate court could not say that they were wrong;

(3) in the absence of express provisions to the contrary in the written agreement for sale and purchase, the learned trial judge was right in noting that all the legal costs of the purchaser and of the new mortgage should have been borne by the appellant if she had been the outright purchaser;

(4) the respondent had been and was paying into the appellant's account with her bank the sum of $500 every month since the assignment of the property. The learned trial judge rightly found that the said sum was not paid by way of rental;

(5) so far as the untrue statements in the two documents were concerned, the learned judge had taken them into account and was entitled on the evidence to accept the respondent's version in spite of the falsehoods;

(6) the respondent's account of the matter in dispute did not necessarily involve proof that he had intended to deceive the Urban Renewal Authority and Credit POSB into granting a loan which they would not have otherwise granted. In these circumstances, the court was unable to say that the respondent had founded his cause of action upon an immoral or an illegal act and that he must be denied the court's aid and process.

Cases referred to:

(1) *Gissing* v. *Gissing* [1970] 2 All E.R. 780, 789.
(2) *Thomas* v. *Thomas* [1947] A.C. 484, 488.
(3) *Khoo Sit Hoh* v. *Lim Thean Tong* [1912] A.C. 323.
(4) *Chow Yee Wah & Anor.* v. *Choo Ah Pat* [1978] 2 M.L.J. 41.
(5) *Muthusamy* v. *Ang Nam Cheow* [1979] 2 M.L.J. 271.
(6) *Edler* v. *Auerbach* [1950] 1 K.B. 359.

COURT OF APPEAL.

Nigel Hague (*Molly Lim, Miss* with him) for the appellant.

Christopher Bathurst (*Ronnie Quek* with him) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court) : This appeal concerns the beneficial ownership of a single storey semi-detached house known as 59 Walmer Drive, Singapore ("the property") held under a 999 year leasehold commencing from January 1, 1953. On November 5, 1979 the leasehold was transferred under the Land Title Act (Cap. 276) by the respondent to the appellant in certain circumstances which we will have to go into in some detail later in this judgment.

The parties to these proceedings had known each other for some eight years and at the time of the transfer of the legal title they were deeply in love and, as found by the learned trial Judge, it was generally accepted by all concerned that their close relationship would blossom into matrimony. However, within a matter of some two months of the transfer and after the appellant was away in Hawaii on a two-year scholarship course the respondent broke off his relationship with the appellant and married another party one year later. Disputes predictably arose over the beneficial ownership of the property. The appellant took steps to sell the property and on learning of this, the respondent filed a caveat under the Torrens System to protect his interest and his possession of the property.* In response, the appellant on October 13, 1981 served on the respondent a notice to quit the property.

Both of them separately commenced proceedings in the High Court which were consolidated and the respondent's action was properly tried first since the burden of proof was upon him to discharge. The respondent claimed that in the course of 1½ months before the written agreement for sale and purchase between them was signed on September 1, 1979, the appellant had expressly and orally agreed that the leasehold would be transferred to her as if it was a sale so that she could raise sufficient monies by a new mortgage to enable him to pay off the existing mortgagees which had taken steps to exercise their mortgagee right of sale. It was part and parcel of the agreement that he would reimburse her and pay for all the legal and other expenses relating to the discharge of the existing mortgage, the sale and purchase, the new mortgage and the repayment of the new loan and interests by monthly instalments. He also claimed that it was agreed that he would pay for the outgoings, such as the yearly property tax of the property and that he would continue to occupy the property. Claiming that the appellant had orally agreed to hold the property after the transfer upon trust for his benefit, the respondent in his action sought a declaration that the appellant was the trustee of the property for his benefit and for an order that she transfer the property to him upon his payment of all monies necessary to discharge the new mortgage.

The appellant, on the other hand, in her action asserted that it was an outright sale, that the written agreement of sale and purchase save for some unimportant errors or omissions reflected the true bargain between them and that the respondent had agreed to pay in addition to the outgoings of the

*See [1982] 2 M.L.J. 12.

property a monthly rent of $500 while she was away in Hawaii pursuing her scholarship studies. At the conclusion of a seven-day trial, judgment was entered in favour of the respondent against which this appeal was brought.

Two grounds of appeal have been canvassed before us. First it was contended that the findings of fact of the learned trial Judge that the property was held by the appellant on trust for the respondent was contrary to the evidence. Alternatively, and this was a new contention brought up for the first time before us, it was submitted that the said finding necessarily involved the respondent having to rely upon an illegal or immoral contract to support his claim, in which case this Court should deny him its aid and process.

In dealing with the first ground of appeal, we think it necessary to say something about the legal principles applicable to a claim such as the respondent's. The principles involved are those in the law of contract and the law of trusts. The oral agreement must be supported by consideration: otherwise it fails as *nudum pactum*. The claim of the respondent was not founded on the basis of a voluntary declaration of trust on the part of the appellant. The claim of the respondent was based on an oral agreement in which it was expressly intended that she would hold the property upon trust for him and which, if established on the evidence, was binding and enforceable.

Bearing in mind the nature of the respondent's claim, we think it instructive to refer to what Lord Diplock had said in *Gissing* v. *Gissing*[1] at p. 789:

> "Any claim to a beneficial interest in land by a person, whether spouse or stranger, in whom the legal estate in the land is not vested must be based on the proposition that the person in whom the legal estate is vested holds it as trustee on trust to give effect to the beneficial interest of the claimant as *cestui que trust*. The legal principles applicable to the claim are those of the English law of trust..."

Dealing with the situation where an express agreement has been made on the way the beneficial interest shall be held, Lord Diplock's further analysis appearing on page 790 is helpful for our present purposes even though the dispute in our case is not between spouses:

> "This is why it has been repeatedly said in the context of disputes between spouses as to their respective beneficial interests in the matrimonial home, that if at the time of its acquisition and transfer of the legal estate into the name of one or other of them an express agreement has been made between them as to the way in which the beneficial interests shall be held, the Court will give effect to it – notwithstanding the absence of any written declaration of trust. Strictly speaking this states the principle too widely, for if the agreement did not provide for anything to be done by the spouse in whom the legal estate was not to be vested, it would be a merely voluntary declaration of trust and unenforceable for want of writing. But in the express oral agreements contemplated by these dicta it has been assumed *sub silentio* that they provide for the spouse in whom the legal estate in the matrimonial home is not vested to do something to facilitate its acquisition, by contributing to the purchase price or to the deposit or the mortgage instalments when it is purchased on mortgage or to make some other material sacrifice by way of contribution to or economy in the general family expenditure. What the Court gives effect to is the trust resulting or implied from the common intention expressed in the oral agreement between the spouses that if each acts in the manner provided for in the agreement the beneficial interests in the matrimonial home shall be held as they have agreed.
>
> An express agreement between spouses as to their respective beneficial interests in land conveyed into the name of one of them obviates the need for showing that the conduct of the spouse into whose name the land was conveyed was intended to induce the other spouse to act to his or her detriment on the faith of the promise of a specified beneficial interest in the land and that the other spouse so acted with the intention of acquiring that beneficial interest. The agreement itself discloses the common intention required to create a resulting, implied or constructive trust."

In this case, the question which the learned trial Judge had to decide was whether the appellant had orally agreed to hold the property after the transfer for the benefit of the respondent, as he alleged, or whether the transfer was effected pursuant to an outright sale, with the respondent retaining possession as her tenant, as she alleged. The Judge's decision ultimately had to depend largely on his assessment of the credibility of the parties to these proceedings who in this case were necessarily the two principal witnesses who could speak of what had in truth and in fact transpired between them prior to the signing of the agreement for sale and purchase on September 1, 1979. Admittedly, and it is abundantly clear that this was fully appreciated by the learned trial Judge, *prima facie* or on the face of the written record the appellant had obtained the sole legal and beneficial ownership of the property. But it was equally clear that her legal and beneficial ownership was not invariably indefeasible nor were the written agreement for sale and the transfer conclusive of the question of a sale if the respondent could prove on a balance of probabilities that she had orally agreed to hold the property upon trust for him. In a case such as the instant case, where there were two directly contradictory versions the acceptance or rejection of which significantly depended on the

oral testimony of the protagonists, the role of an appellate court is clear. We have to accord to the findings of facts of the learned trial Judge the greatest respect and ought not disturb them unless we are satisfied that the learned trial Judge had reached a wrong decision and that in the context of this case "any advantage enjoyed by the trial Judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial Judge's conclusion": see the speech of Lord Thankerton in *Thomas* v. *Thomas*[2] reported under the name of *Watt* or *Thomas* v. *Thomas*. These principles have been reiterated and applied by the Privy Council – see for example *Khoo Sit Hoh* v. *Lim Thean Tong*,[3] *Chow Yee Wah & Anor.* v. *Choo Ah Pat*[4] and *Muthusamy* v. *Ang Nam Cheow*.[5]

Counsel for the appellant contended that this case falls squarely within category III as enunciated by Lord Thankerton in *Thomas* v. *Thomas* (*supra*). Counsel further submitted that the learned trial Judge had "failed to appreciate the weight or bearing of circumstances admitted or proved" (*ibid* per Lord Macmillan at p.491) and that there was no proper consideration of the rival probabilities. In view of these submissions, we have to consider the findings of the learned trial Judge and examine the evidence adduced in the High Court.

We begin with the facts which were not in controversy. The respondent and the appellant first met in 1977 when they were students of Raffles Institution where he was in a Pre-U II class and she in a Pre-U I class. After completing his Pre-U II examinations he took up employment. The appellant continued her education and read Architecture in the then University of Singapore from 1973. They saw each other every day and before long their relationship was so close that they were introducing each other as fiancees and that all parties concerned accepted that they would be married one day. After qualifying as an architect, the appellant started work in 1978 as an architect with the Urban Renewal Authority. By April 1979 both parties knew that the appellant was awarded a scholarship at the East-West Centre in Hawaii for her to undertake post-graduate studies leading to a Master's degree in Urban and Regional Planning. The scholarship was tenable for two years and the course was to begin in August this year.

In the intervening period, a serious problem arose over the property in which the respondent, his ailing father and stepmother had been living. The property was originally owned by the father. In January 1977 he assigned the property to the respondent who mortgaged it to a finance company, Overseas Union Trust Limited ("OUT") for $80,000. The respondent fell into arrears in his mortgage repayments and the appellant knew of his financial difficulties and of the persistent demands of OUT which finally decided to exercise their mortgagee right of sale. By a letter dated July 18, 1979 OUT advised their solicitors that no attempt had been made to settle the outstanding arrears of $3,185 and instructed them to dispose of the property by public auction. A copy of the letter was extended to the respondent who received it. A crisis was developing over the fate of the property at the time when his father was quite ill. Not unexpectedly, he showed the contents of the letter to the appellant who agreed to see what she could do about the problem.

What subsequently transpired between them on the question of how to resolve the crisis lay at the core of the present dispute over the beneficial ownership of the property. As we had noted earlier, the two versions of the two parties were diametrically opposed to each other. After recounting at some length the two versions, the learned trial Judge stated that he accepted the evidence of the respondent and rejected those of the appellant. The crucial evidence of the respondent bearing on what was agreed between him and the appellant were set out by the learned trial Judge in these words:

> "The plaintiff was to transfer the property to her as if by way of sale and the loan was to be secured by a mortgage to Credit POSB. It was, therefore, agreed between themselves that he would, for the sole purpose of obtaining the said loan to discharge the aforesaid mortgage, transfer the property to the defendant as if by way of sale to her and that she would thereafter hold the property as trustee for his benefit. It was also further agreed between themselves that it would be for him to pay (1) all the instalment repayments in respect of the said loan; (2) all legal, stamp and other fees and expenses incurred in transfer of the property to her, and (3) all legal, stamp and other fees and expenses incurred in her mortgage of the property to Credit POSB to secure the loan. He was also to pay the property tax on the property and all PUB bills.

The learned trial Judge then went on to make certain important findings of facts based on the evidence, both documentary and oral, before him. In our view these facts were based on a sufficient substratum of evidence such that we could not as the appellate court say that the findings of facts of the learned trial Judge were wrong. The evidence supporting these findings of facts were important and relevant because they related to what either or both of the parties did or did not do after their

discussions immediately following the crisis created by the threat of the mortgagee sale but before they both agreed to part company and break off their relationship. The facts found were these. On seeing the copy of the OUT letter, the appellant voluntarily offered to enquire from her employers, the Urban Renewal Authority, to see if she could obtain a loan to help the respondent to pay off OUT. It was Mr. Sim Mong Soo, a solicitor, who advised on the conveyancing steps required and who drew up the documents in such a way as to indicate to the Urban Renewal Authority and the Credit POSB, who were the agents of the Urban Renewal Authority, that it was a normal sale and purchase of the property with the appellant obtaining a loan to pay the purchase price. It was also found that the appellant obtained a loan of $93,000 from the Urban Renewal Authority.

The learned trial Judge also considered the evidence which turned on the question whether the respondent had kept his side of the agreement which he had allegedly made with the appellant. On the evidence, he found that the respondent did keep his side of the bargain. The respondent had paid all the legal fees and the stamp and registration fees relating to both the assignment and the new mortgage. In the absence of express provisions to the contrary in the written agreement for sale and purchase, the learned trial Judge was right in noting that all the legal costs of the purchaser and of the new mortgage should have been borne by the appellant if she had been the outright purchaser.

There was also evidence that the respondent had been and was paying into the appellant's account with her bank the sum of $500 every month since the assignment of the property. The learned trial Judge, in our view, rightly found that the said sum was not paid by way of rental. According to the appellant, the respondent had agreed before August 1979 to remain in occupation after the sale and had agreed to pay the monthly rent of $500 long before the Urban Renewal Authority loan had come through. In cross-examination she explained that as an architect she was aware of rental rates and that the market rent of the property was between $500 to $800 per month. On the respondent's account, the agreement was that he would reimburse to her the amount of the mortgage instalments. In the event, the mortgage instalments were $499 per month and at all material times he paid $500 per month. We agree with counsel for the respondent that unless his story was true, this was an amazing coincidence. In this regard, it is pertinent to note that the agreement for sale had made no mention about any monthly tenancy at all. On the contrary, it had provided that vacant possession would be given on completion, which was not in fact what happened.

For the appellant it was submitted that the learned trial Judge had not properly scrutinised two pieces of documentary evidence which counsel described as strong contemporaneous documentary evidence tending to support the appellant's version. In February 1980, two months after breaking off with the appellant, the respondent and his new fiancee applied for an HUDC flat. As no property owner was eligible to apply, the respondent in the application form and in the statutory declaration declared to the effect that he was not the owner of any property and that the property was a "friend's private house." These were plainly false statements unless the appellant's version was in fact the truth. However, the respondent at the trial explained that since the property was not in his name, he could not say he owned it. He further explained that he had applied for the HUDC flat as a standby for the appellant to live in, seeing that her kindness in helping him out of his predicament had disqualified her from purchasing such a flat. The learned trial Judge accepted the respondent's explanation. The other piece of documentary evidence was a letter dated August 13, 1980 which the respondent wrote in the name of the appellant to the Comptroller of Property Tax in connection with his attempt to retain the usual property tax concessions accorded to owners in possession. In the letter the respondent had stated that the appellant had been staying in the property since 1978, that she was away on a scholarship and that she had purchased the property from him. However, we agree with counsel for the respondent that so far as this letter was concerned the issue at the trial was whether or not the appellant then knew of the queries from the Comptroller of Property Tax and whether she had told him to write the letter in the form it was sent out. The respondent was not asked to explain the contents of the letter.

So far as the untrue statements in the two documents are concerned, we also agree with counsel for the respondent that the learned trial Judge had taken them into account and was entitled on the evidence to accept the respondent's version in spite of the falsehoods.

We now turn to the second ground of appeal. On the basis that the learned trial Judge was right in law in accepting the respondent's version, it was

submitted by counsel for the appellant that the respondent and the appellant, together with the solicitor who handled the sale and purchase, were parties to a conspiracy to deceive the Urban Renewal Authority and Credit POSB into the belief that the mortgage loan of $93,000 was being made to the appellant to enable her to purchase the property for herself beneficially. Counsel for the appellant relied on the fourth proposition enunciated by Devlin J. (as he then was) in *Edler* v. *Auerbach*[6] which was in the following terms:

"...fourthly, ...where the Court is satisfied that all the relevant facts are before it and it can see clearly from them that the contract had an illegal object, it may not enforce the contract, whether the facts were pleaded or not."

In our view the respondent's account of the matter in dispute did not necessarily involve proof that he had intended to deceive the Urban Renewal Authority and Credit POSB into granting a loan and that by reason of such deception they had granted a loan which they would not have otherwise granted. We are not at all sure on the evidence that the Urban Renewal Authority, like any other employer, would not have accommodated the appellant and accepted a legal mortgage from her in spite of their private agreement as to the beneficial ownership. The matter was simply not investigated. In fact, there was some evidence that an officer of the Urban Renewal Authority was told of the purpose of the transaction. Again this was not investigated and was understandably left at large since the allegation of illegality was never pleaded. Further, in this case the idea originally put forward by the appellant was to seek a loan in their joint names which was a proposal which might reasonably have been accepted by the Urban Renewal Authority. Thereafter both the appellant and the respondent acted throughout on the advice of their solicitor. In these circumstances, we are quite unable to say that the respondent had founded his cause of action upon an immoral or an illegal act and that we must deny him our aid and process.

Accordingly, we dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Chung & Co.; Shook Lin & Bok.*

WONG HONG TOY & ANOR. v. PUBLIC PROSECUTOR

[C.C.A. (Lai Kew Chai, Punch Coomaraswamy & Chua JJ.) April 14, 1986]

[Singapore – Criminal Appeal No. 10 of 1985]

Criminal Law and Procedure – Transfer of case from Subordinate Court to High Court – Grounds for – Whether political personalities should be treated differently – Criminal Procedure Code (Cap. 113), s. 184(1).

This was an appeal against the decision of the High Court dismissing an application for the transfer of the trial of a case from the Subordinate Court to the High Court ([1986] 2 M.L.J. 8). The High Court had earlier ordered the appellants to be tried before a different District Judge for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code (see [1986] 1 M.L.J. 133).

Held: (1) in this case it has not been made to appear to the Court that a fair and impartial trial could not be had in the District Court;

(2) there was no question of law of unusual difficulty arising in this case;

(3) all accused persons must be treated equally regardless of status. The court cannot accept the proposition that accused persons who are political personalities should be treated differently if they apply to transfer their trials to the High Court.

Cases referred to:

(1) *Attorney-General* v. *Koh Cho Puan & Ors.* See Appendix at page 339.

(2) *Fung Yin Ching & Ors.* v. *Public Prosecutor* [1965] 1 M.L.J. 49.

COURT OF CRIMINAL APPEAL.

J.B. Jeyaretnam for the appellants.

Tan Teow Yeow (Dy. Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Lai Kew Chai J. (delivering the Judgment of the Court) : By an order made by the learned Chief Justice the appellants were ordered to be re-tried before another District Judge for having knowingly made a false statement in a declaration which was by law receivable as evidence and punishable under section 199 read with section 193 of the Penal Code. Under section 184 of the Criminal Procedure Code they applied to the High Court for an order that the trial be transferred from the Subordinate Court to the High Court. At the conclusion of the